

19MUSHAC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 SOLOMON SHARBAT, et al.,

4 Plaintiffs,

5 v.

10 CV 6455(SAS)

6 MARCUS S. BUTLER, et al.,

7 Defendants.

8 -----x
9 New York, N.Y.
September 22, 2011
4:50 p.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN

12 District Judge

13 APPEARANCES

14
15 THE LAW OFFICES OF SCOTT L. FENSTERMAKER, P.C.

Attorney for Plaintiff

16 BY: SCOTT L. FENSTERMAKER

19MUSHAC

1 (Case called)

2 THE COURT: Mr. Butler is not here. It has been a
3 continuing problem, right?

4 MR. FENSTERMAKER: It is, your Honor.

5 THE COURT: He is an individual?

6 MR. FENSTERMAKER: There was a corporate defendant
7 which was wholly owned by Mr. Butler. They defaulted and there
8 was a default judgment that the Court entered against that
9 corporation.

10 Mr. Butler wrote me an email last week explaining that
11 he was going to obtain counsel, but I have not seen a notice of
12 appearance nor have I heard from counsel.

13 THE COURT: So I think that you need to make a motion,
14 to strike -- has he ever answered?

15 MR. FENSTERMAKER: I believe that he has answered,
16 yes. Your Honor, there was a counsel prior --

17 THE COURT: But that was a long time ago.

18 MR. FENSTERMAKER: The prior counsel answered, your
19 Honor, but was ultimately relieved and --

20 THE COURT: That was a long time ago. I am trying to
21 get Mr. Butler to show up and defend, and if he doesn't want
22 to, then make a motion to him for what -- strike the answer and
23 enter a default judgment for failure to defend? He doesn't
24 come. We tell him to come.

25 He knew about this conference, right?

19MUSHAC

1 MR. FENSTERMAKER: This was scheduled at the last
2 court conference, so yes.

3 THE COURT: Was he at the last court conference?

4 MR. FENSTERMAKER: Yes, he was physically here, your
5 Honor, in the courtroom.

6 THE COURT: Do you want to go out in the hall
7 somewhere and try to call him?

8 MR. FENSTERMAKER: We have already done that, your
9 Honor. And in fact I have emailed him, but I will be glad to
10 do it again if your Honor would like.

11 THE COURT: You emailed him and called him from here
12 already?

13 MR. FENSTERMAKER: I e-mailed him from my phone and
14 both the courtroom deputy and myself called him. I recognized
15 his voice on his voice mail, and I gave him the courtroom phone
16 number -- I assume it is the courtroom number, it was an 805
17 number.

18 THE COURT: I will ask my deputy to call one more time
19 and see if we get an answer.

20 Think about how to proceed, but I didn't want to hold
21 the court reporter long.

22 (Recess)

23 THE COURT: Come back up, Mr. Fenstermaker, please.

24 MR. FENSTERMAKER: Yes.

25 THE COURT: So we tried again to reach Mr. Butler. He

19MUSHAC

1 is not answering. He is not here. The conference was
2 scheduled for 4:30 and it is now 35 minutes later. He is
3 clearly not responding to this Court's order. He was here in
4 person and I told him today was the conference.

5 Has he responded to discovery or have you propounded
6 discovery?

7 MR. FENSTERMAKER: I have propounded interrogatories
8 and document requests and received nothing.

9 THE COURT: I think it is time for you to make a
10 motion to strike his answer and if you want another judgment,
11 enter judgment.

12 MR. FENSTERMAKER: Yes, your Honor.

13 THE COURT: When are you going to file your motion?

14 MR. FENSTERMAKER: Your Honor, I am going to be away
15 next week, if I could have the end of the first week of
16 October?

17 THE COURT: If you could do it by October 7th.

18 MR. FENSTERMAKER: Is that the Friday, your Honor?

19 THE COURT: Yes.

20 You could write him a letter, and I ask you to, saying
21 that, based on this conference and his failure to appear, the
22 judge directed that I move to strike the answer and move for
23 default, but if you call me immediately and tell me you are
24 going to defend, I will let the judge know and we will get this
25 done. Give him one last chance and serve him with the motion

19MUSHAC

1 on October 7th.

2 MR. FENSTERMAKER: I will do that tomorrow.

3 THE COURT: Have a good evening.

4 My clerk thinks it is a good idea if you order this
5 short transcript, and you can serve that on him.

6 Assuming you have made your motion as directed on
7 October 7th, if Mr. Butler wishes to respond to your motion in
8 writing, he must do so no later than October 28th. If he does
9 respond on October 28th, then you may have until November 11th
10 to file a reply. If he does not respond, I will decide the
11 motion based solely on the moving papers.

12 That is now on the transcript also.

13
14 o 0 o
15
16
17
18
19
20
21
22
23
24
25